No. _____ (1)

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term 1996

MICHAEL F. DEHONEY,
Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;
PARKER EVATT, Commissioner;
CHARLES J. CEPAK, Warden;
PRIS MACK, Deputy Warden individually and/or in their official capacities,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Whether state statutes severely restricting the actions of state employees concerning the disbursement of inmate funds in their trust accounts create a 14th Amendment Substantive Due Process protected property interest in those funds?

2. Whether a six-week hold on deposits of non-governmental checks prior to access being given to those funds constitutes an undue denial of access?

3. Whether a prison warden is the final policy maker for his respective institution, and if so, can he be held personally liable for violation of inmate constitutional rights caused by omission of policies creating forseeable situations which create those violations?

4. Whether the Rules of Discovery under the Federal Rules of Civil Procedure apply to prisoner civil rights actions, and if so, why is discovery not permitted within the District of South Carolina and the Fourth Circuit?

LIST OF PARTIES TO THE PROCEEDING IN THE COURT BELOW

There are no parent or subsidiary companies to be listed pursuant to Rule 29.1 of the Rules of the United States Supreme Court.

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Michael F. Dehoney respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The August 18, 1995 opinion of the United States District Court for the District of South Carolina, Columbia Division is reprinted in Petitioner's Appendix at [App.3-8]. The August 2, 1996 Judgment of the District of South Carolina, Florence Division is reprinted at [App.9-14]. The August 26, 1996 opinion for the District of South Carolina, Florence Division is reprinted at [App.15-16]. The January 6, 1997 opinion of the United States Court of Appeals for the Fourth Circuit is unpublished but is reprinted at [App.1-2]. The February 12, 1997 opinion of the United States Court of Appeals for the Fourth Circuit is reprinted at [App.17-18].

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered January 6, 1997. A petition for Rehearing with a Suggestion for Rehearing En Banc was denied on February 12, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the District Court was invoked pursuant to the civil rights statute, 42 U.S.C. § 1983 and pursuant to federal question, 28 U.S.C. § 1331.

STATUTES AND RULES INVOLVED

United States Statutes

461(b)(1)(a) The term depository institution means

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act 12 U.S.C. § 1813 or any bank which is eligible to make application to become an insured bank under section 5 of the Act 12 U.S.C. § 1815;

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act 12 U.S.C. § 1813 or any bank which is eligible to make application to become an insured bank under section 5 of the Act 12 U.S.C. § 1815;

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act 12 U.S.C. § 1813 or any bank which is eligible to make application to become an insured bank under section 5 of the Act 12 § 1815;

(iv) any insured credit union defined in section 3 of the Federal Credit Union Act 12 U.S.C. § 1752 or any credit union which is eligible to make application to become an insured credit union under section 5 of the Act 12 U.S.C. § 1781;

(v) any member as defined in section 2 of the Federal Home Loan Bank Act 12 U.S.C. § 1422;

(vi) any savings institution (as defined in section e of the Federal Deposit Insurance Act 12 U.S.C. § 1813 which is an insured depository institution (as defined in such Act) 12 U.S.C. § 1811, et. seq. or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act 12 U.S.C. § 1811, et. seq.

4002 Expedited Funds Availability Schedules

(2) Government checks; certain other checks

Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of -

(d) the first $100 deposited by checks or checks on any one business day;

(f) a cashier's check, certified check, teller's check, or depository check which -

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the check may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) Permanent Schedule

(1) Availability of Funds deposited by local checks

Subject to paragraph (3) of the subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution and the business day on which the funds involved are available for withdrawal.

(2) Availability of funds deposited by nonlocal checks

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution and the business day on which the funds involved are available for withdrawal.

South Carolina State Constitution

The privileges and immunities of citizens of this State and of the United Sates under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or

property without due process of law, nor shall any person be denied the equal protection of the laws. Const., Art. I, § 3.

South Carolina Statutes

24-3-40 Disposition of wages of prisoner allowed to work at paid employment.

Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place those funds on deposit with the State Treasurer for credit to a special account to support victim assistance program established pursuant to the "Victims of Crime 1984." Public Law 98-473, Title 11, Chapter XIV, Section 1404. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or be deposited to the credit of the prisoner.

South Carolina Department of Corrections ("SCDC")

Policies 700.1-6, paragraph 8 Interest.

a. Per Internal Revenue Service requirements, interest payments will be made only to those inmates providing a valid social security number which has been

recorded in the automated system at time of interest earnings. Interest is paid to all inmates which average balances of greater than $10.00.

b. Upon receipt of an interest deposit by the State Treasurer's office, the designated employee in the Financial Accounting Branch will determine the appropriate interest rate and submit it to the Computer Operations Section.

c. Interest will be posted by an automated program. (Emphasis added.]

1500.2 paragraph 3.

Incoming mail will be distributed to inmates and outgoing mail sent to the U.S. Post Office within 24 hours of receipt, excluding weekends and holidays. Incoming packages will be distributed to inmates and outgoing packages sent to the U.S. Post Office within 48 hours, excluding weekends and holidays. Authorized mail and packages will be picked up by SCDC employees and delivered at every level of confinement except in Segregation where packages are not allowed.

STATEMENT OF THE CASE

On June 6, 1994, the Petitioner filed suit against the Respondents alleging five claims to include the Respondents' refusal to a) accord the Petitioner a protected property interest in funds in his inmate trust account, b) provide the Petitioner access to those funds deposited by non-governmental check in a period less than two months after deposit, and c) promulgate policies that guide and control the distribution and safeguarding of the Petitioner's incoming mail.

The District Court chose to disregard the laws of both the United States and the State of South Carolina in refusing

to recognize a previous decision by this Court that inmates have a protected liberty interest in the funds in their trust accounts by denying certiorari in [Tellis v. Godinez, 5 F.3d 1314 (10th Cir.), cert. denied, 115 S.Ct. 354 (1994).]

The District Court redefined the Petitioner's clearly defined claim concerning the Respondents' responsibility to develop policies to control the actions of their subordinates vis-a-vis delivery, distribution, and safeguarding of the Petitioner's incoming mail into one of a claim under the doctrine of Respondeat Superior. An example was given of a previous incident concerning destruction of mail by a corrections officer which occurred nine months prior to the Respondent Warden's assumption of his duties. The District Court allowed the Respondents to redefine the Petitioner's claim into one of a failure to supervise the subject officer's conduct.

The District Court likewise refused to allow the Petitioner to conduct any discovery in the case. A formal judicial complaint was filed against the District Court in January 1995, pursuant to 28 U.S.C. § 372. This complaint was denied by the 4th Circuit Chief Judge Sam Ervin, III. The decision was affirmed by the 4th Circuit's Judicial Council.

The Fourth Circuit refused to comment on the Petitioner's appeal, especially in light of the District Court's refusal to permit discovery and the Court of Appeals' refusal to allow it as well. In addition, the Court's opinion was in conflict with decisions of the 5th, 9th and 10th Circuits and failed to give an explanation as to this conflict. Furthermore, the Petitioner continued to have difficulty with the District Court concerning his continued refusal to allow discovery in any of the Petitioner's cases for failing to register as counsel for the Respondents as he was unable to remain impartial as required by 28 U.S.C. § 144 and 455(a). The Chief Judge, Ervin, was made a party to all of these complaints, yet chose to make himself a part of the panel which denied the

Petitioner's appeal. The other two members of the panel had previously unlawfully adjudicated another of the Petitioner's cases in the absence of all jurisdiction. Therefore, a petition for rehearing was filed with the Court to obtain some opinion as to the failure of the 4th Circuit to render an opinion.

The Petitioner now seeks certiorari review of those decisions of the District Court and the Court of Appeals to (a) determine whether or not an inmate has a protected property interest in funds in his prison trust account if state statutes and operational regulations severely restrict the actions of state officials relevant thereto, b) determine whether a minimum of a six-week hold on access to funds (after deposit of funds from non-governmental checks) constitutes an undue denial of access to those funds, c) determine whether a warden of a correctional institution is the final policy maker of his respective institution concerning operations which apply solely to that institution's operation in addition to those official policies promulgated by his superiors, and d) if so, can be held personally liable for constitutional torts caused by the omission of policies designed to control the actions of his subordinates in forseeable events.

REASONS FOR GRANTING THE WRIT

1. The omission of the Fourth Circuit Court of Appeals refusing to acknowledge that state statutes severely restricting the actions of state officials concerning the disbursement of funds in inmate trust accounts is in contravention to previous rulings by this Court.

This Court previously denied certiorari in [Tellis v. Godinez, 5 F.3d 1314 (10th Cir.), cert. denied 115 S.Ct. 354 (1994)] wherein one principal claim in the Tenth's Circuit's decision was that inmates have a protected property interest

in funds in their trust accounts. If state statutes and operational regulations severely restrict the actions of state officials concerning the disbursement of those funds, then a protected liberty interest has been stated. This same decision was reached by the Ninth Circuit in [Gillihan v. Schillinger,] 872 F.2d 935 (9th Cir. 1989) and by District Courts in the 5th Circuit. See [Delverne v. Klevenhagen, 888 F.Supp.64 (S.D. Tex. 1995),] as well as numerous other District Courts in the 9th and 10th Circuits. This decision was brought to the attention of the Fourth Circuit both on appeal and on petition for rehearing as the Court's decision was in contravention with decisions of other Circuits and the Court's opinion failed to address the issue. Yet, the Fourth Circuit continues to disregard the decision by this Court when certiorari was denied in Tellis, thereby creating de facto case law of the United States. The line of reasoning begun by this Court's previous decisions in [Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974)]and [Kentucky Dept. of Corrections, 480 U.S. 454, 109 S.Ct. 1904 (1989)]still continue and were reaffirmed by this Court's decision in [Sandin v. Conner, ___ U.S. _____, 115 S.Ct. 1970 (1995).] This Court's holding in [Sandin]does not apply to core concerns of deprivation of life, liberty or property addressed by the 14th Amendment's Due Process Clause in Section 1. [Harper v. Young, 54 F.3d 553, 564 n.1 (10th Cir. 1995).]

State statutes of the State of South Carolina in § 24-3-40, S.C. Code of Laws Ann. (1976) severely restrict the actions of state officials in the disbursement of funds earned by those inmates in community-based jobs and those working in Prison Industries. SCDC Policy 700.1-6, ¶ 8(a)-(c) mandate the payment of interest in inmate accounts. Together, these statutes and regulations severely restrict the actions of state officials concerning the disbursement of those funds, yet the District Court, together with the 4th

Circuit of Appeals, chose to pretend those state statutes and operational regulations do not exist.

Either the Fourth Circuit and the District of South Carolina (DSC) are required to abide by the decisions of this Court in previously decided cases, or they are not. As there was no ruling, this Court should grant certiorari and reverse the decision of the Circuit Court to recognize this Court's previous decisions.

2. A six week hold on access to funds in inmate trust funds from non-governmental checks constitutes an undue denial of access to those funds.

The South Carolina Department of Corrections ("SCDC") mandates a six-week hold on all non-governmental checks after deposit in a local bank. Outlying institutions deposit checks only once a week adding an additional 1-2 week delay in access to those funds. This includes only certified bank checks and business checks as personal checks are not accepted for deposit.

12 U.S.C. § 461 (b)(1)(a) defines what exactly constitutes a banking institution. SCDC, while not a banking institution by statutory definition, nevertheless, performs all the relevant functions of a banking institution with the exception of issuing loans. Pursuant to 12 U.S.C. § 4002, et. seq., banking institutions are required to credit deposits within a matter of ten days or less. Yet, SCDC is allowed to retain deposits up to two months prior to giving one access to his funds. This constitutes an undue denial to those funds. A more reasonable approach would be to require a two week hold on these deposits even those the majority of them are certified funds in order to allow SCDC the requisite amount of time to have these checks clear. SCDC is a state agency, and therefore would not go insolvent should a check from a business be subsequently declared to have insufficient funds.

But the District Court refused to make a ruling on this issue, and the Fourth Circuit followed the DSC's example.

3. A prison warden is the final policy maker for his respective institution, and therefore can be personally held liable for his/her own failure to develop those policies required to control the actions of his/her subordinates in foreseeable institutions where the absence of policies would lead to constitutional torts.

A prison warden is the final policy maker of his respective institution and controls its operation subject to the mandates of his superiors. This decision is best summarized in the 8th Circuit's holding in [Martin v. White, 742 F.2d 469 (8th Cir. 1984).] Agency wide regulations are designed to control the actions of agency employees in a general manner of speaking. It is up to the final policy maker of a correctional institution to promulgate those policies needed to be tailor made for that institution.

As previously noted, SCDC Policy 1500.2, paragraph 3 contains only a general reference to a statement that SCDC employees will deliver the mail within 24 hours of receipt. The Petitioner's former institution's mail policy (Broad River Correctional Institution Policy 1500.2) contains no instructions on how employees are to distribute and safeguard incoming inmate mail. The Petitioner experienced the exact same action when a corrections officer attempted to destroy the Petitioner's incoming mail on September 14, 1993. Subsequently, the Petitioner's mail was lost or misplaced and never delivered. This event was offered as an example of what can happen when there are no policies present to control the actions of subordinate corrections officers in foreseeable situations which are the casual nexus for constitutional torts. This resulted in the District Court and the respondents redefining the claim into one of Respondeat Superior, an action sustained by the District

Court. This was a ludicrous assumption as the mail incident occurred nine months prior to the Respondent Warden assignment to his present position.

This Court in [City of Canton, OH v. Harris, ___ U.S. ___, 109 S.Ct. 1197 1989)] acknowledged that failure to promulgate policies constituted a recognizable constitutional tort. In [Collins v. City of Harker Heights, 503 U.S. 115, 112 S.Ct. 1061 (1992)], this Court reaffirmed that only one occurrence could constitute an actionable claim. For the foregoing reasons, this Court should grant certiorari review.

4. The District Court of South Carolina and the Fourth Circuit routinely deny inmate pro se litigants the chance to conduct discovery thereby violating their First Amendment rights to petition the Courts for the redress of grievances.

The Petitioner was denied the chance to conduct any discovery in the instant case. A formal complaint was filed pursuant to 28 U.S.C. § 372. The complaint was adjudicated by the 4th Circuit's Chief Judge, Sam Ervin, III, denied, and the denial affirmed by the 4th Circuit's Judicial Council. The issue was addressed on appeal and again denied. The issue of the denial of discovery was again raised and denied on petition for rehearing en banc. The DSC and the Fourth Circuit routinely ignore and scoff at this Court's previous rulings concerning the grant of summary judgment and Rules 33-37 of the Federal Rules of Civil Procedure. This Court previously ruled in [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1984)] and [Celotrex v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1984)] that summary judgment is only proper in the ABSENCE of genuine material facts in dispute. Rule 56(f), F.R.C.P., further allows for the suspension of summary judgment procedures pending the completion of discovery. Again, Rule 56(f) has no meaning within the DSC or the 4th Circuit. Therefore, the

Petitioner was unable to present any meaningful evidence to avoid summary judgment due to the District Court and 4th Circuit's violation of the Petitioner's 5th Amendment rights of Substantive Due Process. Furthermore, the 4th Circuit's Chief Judge should have recused himself from serving on the appellate panel due to his previous personal interest in the case, having previously denied discovery and been a party to six additional complaints filed against the District Court with the Chief District Judge (copies furnished to the Chief Judge of the 4th Circuit during the pendency of the appeal). Yet Judge Ervin chose to again violate the Petitioner's 1st Amendment right to petition the Courts for the redress of grievances and 5th Amendment right of Substantive Due Process.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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No. _____

In The

Supreme Court of the United States

October Term 1996

MICHAEL F. DEHONEY,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner; CHARLES J. CEPAK, Warden; PRIS MACK, Deputy Warden individually and/or in their official capacities,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Appendix to Petition for Writ of Certiorari

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7391

MICHAEL F. DEHONEY,

Plaintiff - Appellant,

versus

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner; CHARLES J. CEPAK, Warden; PRIS MACK, Deputy Warden individually and/or in their official capacities,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence. William B. Traxler, Jr., District Judge. (CA-94-1902-4-21BE)

Submitted: December 19, 1996
Entered: January 6, 1997

Before ERVIN and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Michael F. Dehoney, Appellant Pro Se. Joseph Crouch Coleman, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's orders denying relief on his 42 U.S.C. § 1983 (1994) complaint and denying his motion to amend the court's order. We have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Dehoney v. South Carolina Dep't of Corrections, No. CA-94-1902-4-21BE (D.S.C. Aug. 2, 1996; Aug. 26, 1996). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

C/A No. 3:94-1902-21BD

Michael Forbes Dehoney,
#186871,

Plaintiff,

vs.

South Carolina Department of
Corrections; Parker Evatt, Commissioner;
and William D. Catoe, Deputy Commissioner,
Charlie J. Cepak, Warden,
Pris Mack, Deputy Warden,

Defendants.

ORDER

Entered: August 18, 1995

This matter involves an action brought by a pro se prisoner, Michael Forbes Dehoney ("Dehoney"), seeking relief pursuant to 42 U.S.C. § 1983. Upon being filed, the case was automatically referred to the Honorable Bristow Marchant, United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Local Rule 19.02(B)(2)(d) and (e), D.S.C. On July 20, 1995, the magistrate judge filed his report and a recommendation that

that the South Carolina Department of Corrections be dismissed as a party defendant in this case and that the defendants' motion to dismiss be granted with regard to all claims set forth in the complaint except Dehoney's claim of deliberate indifference to a serious medical need. The magistrate judge further recommends that Dehoney's motion for summary judgment be denied.

This report and recommendation was sent to Dehoney and the defendants along with a notice of the importance of timely filing objections to the magistrate judge's report and recommendation. The parties were specifically advised that a failure to file objections would result in a loss of the right to appeal an order of the district court which adopted the recommendation. United States v. Schronce, 727 F.2d 91 (4th Cir.) cert. denied, 467 U.S. 1208 (1984).

The defendants timely filed their objections on July 25, 1995. On July 31, 1995, Dehoney timely filed his objections. Title 28 U.S.C. § 636 (b)(1) provides that a judge of the district court shall make a de novo determination of those portions of the report and recommendation to which objections are made. It is within the authority of the district court to accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge. 28 U.S.C. § 636(b)(1). In appropriate cases, the district court may receive further evidence or recommit the matter to the magistrate judge with instructions. Id. As part of the responsibility of the district court to make a de novo review of any issue to which objection is made, the district court is obligated to consider all arguments related to an issue, regardless of whether they were raised before the magistrate. United States v. George, 97 F.2d 1113, 1118 (4th Cir. 1992).

Based upon a review of the record, the applicable law, and the briefs of the parties, the court is of the opinion that Magistrate Judge Merchant's report and recommendation should be adopted and made a part of this order except for the magistrate judge's findings regarding

[sic] Dehoney's claims for the denial and destruction of his mail and the denial of proper medical treatment. The court now turns to the objections filed by the Dehoney.

Dehoney's substantive allegations go to the charges of (1) the destruction of and interference with his mail and the receiving of personal property, namely typewriter ribbons, (2) the violation of prison policies in the operation of the mailroom, the prison canteen, and the institution's financial operations, specifically the E.H. Cooper Trust Fund, and (3) the denial of adequate medical care. Dehoney asserts that the acts of the defendants violate his First, Fourth, Eighth, and Fourteenth Amendment rights.

In his objections, Dehoney believes that he is entitled to summary judgment because there is no genuine issue of fact. However, under Rule 56(c) of the Federal Rules of Civil Procedure, the moving party must show that there is no question of fact and that he is entitled to judgment as a matter of law. In the case at bar, as will be addressed throughout this order, Dehoney fails to state claims for which relief can be granted. Therefore, this objection is meritless.

Dehoney further claims that his mail was improperly retained and destroyed in an incident occurring on September 15, 1993 with Corrections Officer D. Gregg. In Procunier v. Martinez, 416 U.S 396, 409 (1974), the Supreme Court recognized that prisoners, through non-prisoner correspondents, have a right under the First and Fourteenth Amendments to receive communication free from arbitrary or unjustified governmental interference. Rule 12(b)(6) requires the court to accept the allegations of the complaint as true, and all inferences must be drawn in favor of the party opposing the motion. Applying this standard, Dehoney's allegations that the defendants unreasonably delayed and destroyed his mail appear to state a cognizable claim for relief under § 1983. See Owen v. Lash, 682 F.2d 648, 652-53 (7th Cir. 1982); Bolding v. Holshouser, 575 F.2d 461,

464-65 (4th Cir.), cert. denied, 439 U.S. 837 (1978).[1] However, Dehoney's allegations that he was denied twelve typewriter ribbons and that if he sent his typewriter out of the prison for repairs, the typewriter would not be allowed back into the institution are not claims of constitutional dimension. Dehoney has no constitutional right to a typewriter or typewriter ribbons. Therefore, these claims are meritless.

Dehoney also asserts that the recent imposition of the prison rule which prohibits the possession of certain items by inmates imposes an undue financial hardship on inmates and their families because of the unnecessary mailing costs. As the magistrate judge concludes, this claim does not state a deprivation of any constitutional right. Therefore, this claim is subject to dismissal.

Dehoney next asserts that the defendants have violated the Federal Expedited Banking Reform Act of 1993 by placing a six-week hold on non-governmental checks. However, even if the defendants have violated this Act,[2] the allegation does not state a claim under § 1983. Section 1983 addresses constitutional deprivations only. This is not a constitutional deprivation. Dehoney has also alleged that his Cooper Trust Fund Account is being improperly managed in violation of the Act. Again, this does not state a claim under § 1983.

Finally, Dehoney's claims concerning the prison canteen operations are likewise without merit. These

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[1] Apparently, the magistrate judge must have overlooked Dehoney's allegations that the defendants delayed and destroyed his mail. As stated above, this court declines to adopt the portion of the magistrate judge's report and recommendation addressing this issue.

[2] This court expresses no opinion as to whether or not the defendants have violated this Act.

allegations do not state a claim upon which relief can be granted under § 1983.[3]

The court now turns to the objections filed by the defendants. The defendants assert that Dehoney's claim concerning the medical operations at the Broad River Correctional Institution should also be dismissed because Dehoney has not been denied medical treatment. In Dehoney's complaint, he alleges that there are no qualified medical personnel on duty at the Institution after 6:00 p.m. during the week, and no doctor available on the weekends. Dehoney contends that during 1993, three individuals on separate occasions suffered heart attacks over the weekend and were denied proper medical attention. Dehoney states that these individuals subsequently died as a result of their heart attacks. The defendants contend that Dehoney has failed to state a claim under § 1983 because he has not shown a denial of medical treatment. This court agrees. His only claims are that other inmates did not receive proper medical treatment. Dehoney cannot maintain an action under § 1983 on behalf of other persons whose rights may or may not have been violated. See Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975). Dehoney has failed to show a denial of medical treatment.[4] Therefore, this claim is meritless.

THEREFORE, IT IS ORDER that the South Carolina Department of Corrections is dismissed as a party defendant from this case;

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[3] As noted by the magistrate judge, Dehoney filed a separate civil complaint concerning the operation of the prison canteen system within the South Carolina Department of Corrections. See Dehoney v. South Carolina Department of Corrections, et al., C/A No. 0:94-3169. This court granted the defendants' motion to dismiss on July 31, 1995.

[4] As stated above, this court declines to adopt the portion of the magistrate judge's report and recommendation addressing the issue.

IT IS FURTHER ORDERED that the defendants' motion to dismiss is granted as to all claims except Dehoney's claim for the interference and destruction of his mail;

IT IS FURTHER ORDERED that Dehoney's motion for summary judgment is denied;

IT IS SO ORDERED.

/s/ William B. Traxler, Jr.
United States District Judge

August 16, 1995
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

C/A No. 4:94-1902-21BE

Michael Forbes Dehoney,
#186871,

Plaintiff,

vs.

South Carolina Department of
Corrections; Parker Evatt, Commissioner;
and William D. Catoe, Deputy Commissioner,
Charlie J. Cepak, Warden,
Pris Mack, Deputy Warden,

Defendants.

ORDER

Entered: August 2, 1996

This matter involves an action brought by a pro se prisoner, Michael Forbes Dehoney ("Dehoney"), seeking relief pursuant to 42 U.S.C. § 1983. Upon being filed, the case was automatically referred to the Honorable Bristow Marchant, United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Local Rule

19.02(B)(2)(d) and (e), D.S.C.[1] On June 26, 1996, the magistrate judge filed her report and a recommendation that the defendants' motion for summary judgment be granted.[2]

This report and recommendation was sent to Dehoney along with a notice of the importance of timely filing objections to the magistrate judge's report and recommendation. Dehoney was specifically advised that a failure to file objections would result in a loss of the right to appeal an order of the district court which adopted the recommendation. United States v. Schronce, 727 F.2d 91 (4th Cir.) cert. denied, 467 U.S. 1208 (1984).

On July 15, 1996, Dehoney timely filed his objections. Title 28 U.S.C. § 636(b)(1) provides that a judge of the district court shall make a de novo determination of those portions of the report and recommendation to which objections are made. It is within the authority of the district court to accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge. 28 U.S.C. § 636(b)(1). In appropriate cases, the district court may receive further evidence or recommit the matter to the magistrate judge with instructions. Id. As part of the responsibility of the district court to make a de novo review of any issue to which objection is made, the district court is obligated to consider all arguments related to an issue, regardless of whether they were raised before the magistrate. United Sates v. George, 971 F.2d 1113, 1118 (4th Cir. 1992).

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[1] This case was transferred to the Honorable Margaret B. Seymour, United States Magistrate Judge, on May 1, 1996.

[2] This action has a lengthy procedural history. Because the magistrate judge adequately set forth the procedural history in this case, it is unnecessary for this court to do so here. The only remaining issue before this court is a claim that the defendants neglected to properly train and supervise their subordinates with respect to handling the personal mail addressed to inmates.

Based upon a review of the record, the applicable law, and the briefs of the parties, the court is of the opinion that Magistrate Judge Seymours' report and recommendation should be adopted and made a part of this order. The court now turns to objections filed by Dehoney.

In his objections, Dehoney asserts the magistrate judge incorrectly states the issue remaining in this case. Dehoney contends the issue is not one of supervisory liability based on the incident involving Officer Dennis Gregg,[3] but is one involving the failure of the defendants to properly train and supervise their subordinates. However, Dehoney is incorrect. The magistrate judge correctly stated and analyzed the issue. In order for the defendants to be held liable for the failure to train and supervise their subordinates, a finding of supervisory liability must be present. This objection is meritless.

Next, Dehoney argues that he has met the three elements necessary to establish supervisory liability. The three elements necessary to establish supervisory liability under § 1983 are: (1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury to the plaintiff; (2) that the supervisor's response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices;" and (3) that there was an "affirmative causal link" between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir.), cert. denied, 130 L. Ed. 2d 24 (1994) (citations omitted).

Dehoney claims that he has met the first element because he has suffered a constitutional injury by Officer

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[3] This incident involved a scuffle over several pieces of incoming mail between Dehoney and Officer Gregg.

Gregg's action. In support of his contention, Dehoney cites an affidavit from Robert Keith, a prisoner, who gives his version of the incident. This affidavit reveals the frivolity of Dehoney's complaint. Dehoney also states that Officer Gregg falsified reports and was facing investigation by the State Attorney General's Office for this offense. Dehoney further claims that he has met the first element because he does not have to show multiple instances of similar constitutional violations.

To satisfy the first element, Dehoney must show the supervisor's knowledge of conduct engaged in by a subordinate that poses a pervasive and unreasonable risk of constitutional injury to him. Shaw, 13 F.3d at 799. "Establishing a 'pervasive' and 'unreasonable' risk of harm requires evidence that the conduct is widespread . . . and that the conduct engaged in by the subordinate poses an unreasonable risk of harm of constitutional injury." Id. Thus, the first inquiry is whether conduct took place which poses an unreasonable risk of constitutional injury to Dehoney. Dehoney claims that Officer Gregg refused him delivery of his own personal mail and attempted to destroy the mail. Prisoners possess a right to receive mail, subject to reasonable regulations. See Boulding v. Holshouser, 575 F.2d 461 (4th Cir.), cert. denied 439 U.S. 837 (1978) (citing Procunier v. Martinez, 416 U.S. 396 (1974)). Using the court's imagination and assuming that Dehoney was exposed to an unreasonable risk of harm of constitutional injury by Officer Gregg, Dehoney still cannot prevail. Dehoney must provide evidence that conduct such as that exhibited by Officer Gregg is widespread. Only then may knowledge be imputed to supervisory personnel. Wellington v. Daniels, 717 F.2d 932 (4th Cir. 1983). There is no evidence that Officer Gregg's actions, if they occurred, were anything but an isolated incident. Although Dehoney claims that he does not have to show evidence of widespread conduct resulting in constitutional injury, he is simply incorrect. The Fourth

Circuit case law is clear that it must be shown that "there is a history of widespread abuse." Id. at 936; see also Shaw, 13 F.3d at 799; Miltier v. Beorn, 896 F.2d 848, 854 (4th Cir. 1990); Slakan v. Porter, 737 F.2d 368, 373 (4th Cir. 1984), cert. denied, 470 U.S. 1035 (1985). Therefore, this objection is without merit.

With regard to the second element, Dehoney asserts that he has proven deliberate indifference by the failure of the defendants to develop written procedures and policies which guide their subordinates in the performance of their official duties. Under the second element, Dehoney must demonstrate continued inaction in the face of pervasive abuses before defendants' conduct can be characterized as "deliberate indifference" or "tacit authorization of the offensive acts." Orpiano v. Johnson, 632 F.2d 1096, 1101 (4th Cir. 1980), cert denied 450 U.S. 929 (1981). Dehoney acknowledges that there is an existing policy which covers the distribution of mail by the South Carolina Department of Corrections personnel. There has been no showing of a practice or pattern of failing to properly distribute the mail to inmates by the Corrections Officers. Accordingly, Dehoney has failed to satisfy the second element of the test and his objection is meritless.

Finally, Dehoney asserts that he has met the third element because the inaction of the defendants bears a direct, affirmative causal link to the harm suffered. There being no proof of deliberate indifference, Dehoney cannot meet the third element of the test. See Slakan v. Porter, 737 F.2d 368, 376 (4th Cir. 1984) (injuries must be a natural and forseeable consequence of the supervisors' indifference).

The objections advanced by Dehoney fail to convince this court that his constitutional rights were violated.

THEREFORE, IT IS ORDERED that the defendants' motion for summary judgment is granted;

IT IS SO ORDERED.

/s/ William B. Traxler, Jr.
United States District Judge

July 31, 1996
Florence, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

C/A No. 4:94-1902-21BE

Michael Forbes Dehoney,
#186871,

Plaintiff,

vs.

South Carolina Department of
Corrections; Parker Evatt, Commissioner;
and William D. Catoe, Deputy Commissioner,
Charlie J. Cepak, Warden,
Pris Mack, Deputy Warden,

Defendants.

ORDER

Entered: August 26, 1996

Before the court is a motion by the plaintiff for an amendment of this court's order issued on August 2, 1996. The issues raised in the motion have been reviewed and found to provide no basis for the relief sought.

THEREFORE IT IS ORDER that the motion to amend be denied.

/s/ William B. Traxler, Jr.
United States District Judge

Greenville, South Carolina
August 20, 1996

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 96-7391
CA-94-1902-4-21BE

MICHAEL F. DEHONEY

Plaintiff - Appellant

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner; CHARLES J. CEPAK,Warden; PRIS MACK, Deputy Warden individually and/or in their official capacities

Defendant - Appellees

On Petition for Rehearing with Suggestion for Rehearing in Banc

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Filed: February 12, 1997

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of his Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that is should be denied,

IT IS ORDERED that the petition for rehearing and suggestion or rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor
CLERK